

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

RONALD KUIPER and CONLEY KUIPER,

Plaintiffs,

vs.

INTERNATIONAL FLAVORS &  
FRAGRANCES, INC.; *et al.*,

Defendants.

No. C06-4009-MWB

**ORDER**

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This matter is before the court on the plaintiffs' Motion to Compel Discovery (Doc. No. 101). In the motion, the plaintiffs seek an order compelling the defendant Flavors of North America ("FONA") to produce documents in response to the plaintiffs' request for "All trial transcripts, deposition[] transcripts and videotapes involving instances when any employee, officer or director of [FONA], its predecessors or its subsidiaries has testified under oath or been deposed in connection with any lawsuit or claim alleging a health hazard, risk or injury associated with exposure to any ingredient or product that [FONA] identified in response to Interrogatory No. 2." Doc. No. 101-3, p. 25, ¶ 35. FONA's response to Request 35 was to assert boilerplate objections, and then to state "there are no documents to be produced." *Id.*

Subsequent to FONA's response to the request for production, witnesses on behalf of FONA were deposed in a similar case pending in St. Louis County, Missouri. The plaintiffs requested copies of those depositions transcripts pursuant to Request 35, and FONA refused to produce the transcripts, citing protective orders on file in the Missouri case. *See* Doc. No. 105, FONA's resistance to the plaintiffs' motion to compel.

The court held a hearing on the plaintiffs' motion on May 1, 2007. Kenneth B. McClain and Steven E. Crick appeared on behalf of the plaintiffs. Ronald B. Lee and

Moira H. Pietrowski appeared on behalf of FONA. William R. Hughes and Mary-Jo Middlehoff appeared on behalf of the defendant International Flavors & Fragrances, Inc. Lee M. Seese and Paul E. Benson appeared on behalf of Sensient Flavors, Inc.

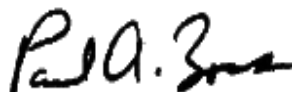
During the hearing, counsel for FONA acknowledged that at the time of the depositions in question, the transcripts were not designated confidential. It was only after the plaintiffs in the present action requested copies of the transcripts, over three months later, that FONA designated the transcripts confidential in the Missouri case.

The court finds FONA's after-the-fact designation of the deposition transcripts to be ineffective in preventing their disclosure. However, even if the depositions had been designated confidential at the time they were taken, FONA likely could not decline to produce transcripts of its own witnesses' depositions. Furthermore, an adequate protective order is in place in the present action that is sufficient to protect sensitive information from disclosure outside of this lawsuit.

The plaintiffs' motion to compel is **granted**. FONA must produce the deposition transcripts **by May 3, 2007**.

**IT IS SO ORDERED.**

**DATED** this 1st day of May, 2007.



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PAUL A. ZOSS  
CHIEF MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT